

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAFARGE NORTH AMERICA INC.

Defendant.

No. 14-cv-01454

Noting Date: October 3, 2014

UNOPPOSED MOTION TO ENTER STIPULATION

Plaintiff United States, on behalf of the United States Environmental Protection Agency, moves to enter the Stipulation of Settlement and Judgment (Stipulation) attached to this motion. The proposed Stipulation between the United States and Defendant Lafarge North America Inc. (Lafarge) resolves claims brought by the United States for civil penalties under Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d). The claims against Defendant Lafarge arise from discharges of industrial stormwater and process wastewater to the Duwamish Waterway in violation of National Pollutant Discharge Elimination System (NPDES) permit. See Complaint, Dkt. 1. The Stipulation provides that Defendant will pay \$300,000 to the United States within ten days of entry of the Stipulation by the Court, in exchange for a release of the claims alleged in the United States' Complaint. Stipulation ¶¶ E, H. **Defendant does not oppose the Stipulation and, by its signature, Defendant has consented to the entry of the Stipulation. Id. ¶ K.**

Unopposed Motion to Enter Stipulation

UNITED STATES DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
P.O. Box 7611, Washington, DC 20044-7611
(202) 514-4185

For the reasons stated above, the United States requests that the Court sign and enter the attached Stipulation.

Respectfully submitted,

SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

s/ Deanna J. Chang
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OF COUNSEL:

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Office of Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Unopposed Motion to Enter Stipulation

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE
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5
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7 UNITED STATES OF AMERICA,)
8)
9 Plaintiff,)
10 v.) Civil No.
11)
12)
13 LAFARGE NORTH AMERICA INC.,)
14)
15 Defendant.)
16 _____)
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20 **STIPULATION OF SETTLEMENT AND JUDGMENT**
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23 1. *WHEREAS* the United States of America, acting at the request of the
24 Administrator of the United States Environmental Protection Agency ("EPA"), is commencing
25 this action by filing a Complaint simultaneously with this Stipulation of Settlement and
26 Judgment, alleging violations by Lafarge North America Inc. (the "Defendant") of the Clean
27 Water Act (the "Act"), 33 U.S.C. § 1251 *et seq.* for the discharge of industrial stormwater,
28 process wastewater, and other pollutants at its cement manufacturing facility located at 5400
29 West Marginal Way, Seattle, Washington, in violation of 33 U.S.C. § 1311 on various dates
30 between May 2006 and May 2012;

31 1. *WHEREAS* the United States and the Defendant (the "Parties") agree that it is in
32 the public interest to resolve this matter without litigation and have negotiated this Stipulation of
33 Settlement and Judgment in good faith to avoid expensive and protracted litigation;

United States v. Lafarge North America Inc.
Stipulation of Settlement and Judgment

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1 2. *NOW THEREFORE*, without adjudication or admission of any issue of fact or
2 law, and without any admission of liability by the Defendant, the Parties, by and through the
3 undersigned, agree and stipulate as follows:

4 A. This Court has jurisdiction over the subject matter of this action pursuant to 28
5 U.S.C. §§ 1331, 1345 and 1355 and 33 U.S.C. § 1319(b). Venue is proper in this District
6 pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391 and 1395, because the Defendant
7 conducts business in this District and because the alleged violations occurred in this District.

8 B. For the purposes of this Stipulation of Settlement and Judgment, or any action to
9 enforce it, the Defendant consents to the Court's jurisdiction over this Stipulation of Settlement
10 and Judgment and any such action over the Defendant and consents to venue in this judicial
11 district.

12 C. For purposes of this Stipulation of Settlement and Judgment, the Defendant agrees
13 that the Complaint states claims upon which relief may be granted pursuant to Section 301(a) of
14 the Clean Water Act, 33 U.S.C. § 1311(a).

15 D. The obligations of this Stipulation of Settlement and Judgment apply to and are
16 binding upon the United States and upon the Defendant and its successors. Any change in the
17 Defendant's ownership or corporate status shall not alter its obligations hereunder.

18 E. Within ten business days of entry by the Court of this Stipulation of Settlement
19 and Judgment, the Defendant shall pay to the United States via electronic funds transfer ("EFT")
20 a total civil penalty of \$300,000.00, in accordance with instructions provided by the Financial
21 Litigation Unit of the Office of the United States Attorney for the Western District of
22 Washington. The EFT documents shall refer to the CDCS number supplied by the Financial
23 Litigation Unit and DOJ case number 90-5-1-1-10144. Payments by EFT must be received at the

1 Department of Justice lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day.

2 Copies of the payment and transmittal documents shall be mailed to:

3 Chief, Environmental Enforcement Section
4 Environmental Enforcement Section
5 Environment & Natural Resources Division
6 United States Department of Justice
7 P.O. Box 7611 Ben Franklin Station
8 Washington, D.C. 20044-7611
9

10 and

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12 Alex Fidis
13 Assistant Regional Counsel
14 U.S. EPA, Region 10
15 1200 Sixth Avenue, Suite 900
16 Seattle, Washington 98101
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18 F. In the event that the Defendant does not comply with the payment obligations of
19 Paragraph E above, the Defendant shall pay a stipulated penalty to the United States in the
20 amount of one thousand dollars (\$1,000) per day for each day that the civil penalty remains
21 unpaid. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph E
22 above for payment of the civil penalty. Further, interest shall accrue on the unpaid balance of
23 civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date
24 that such penalties are due and continuing until paid. If payment specified in Paragraph E is not
25 made when due, then, in addition to other remedies herein, the United States reserves the right to
26 move this Court to vacate this Stipulation of Settlement and Judgment and reinstate this action.

27 G. Within ten business days of receipt of all amounts due under this Stipulation of
28 Settlement and Judgment, the United States shall file a notice with the Court that full payment
29 has been made.

1 H. The Defendant's payment of the civil penalty identified in Paragraph E above and
2 any stipulated penalties and interest required by Paragraph F above shall constitute a complete
3 settlement and shall be in full satisfaction of the United States' claims regarding the violations of
4 the Clean Water Act alleged in the Complaint through the date of lodging. This Stipulation of
5 Settlement and Judgment is limited to the civil claims under the Clean Water Act that are
6 expressly alleged in the Complaint. This Stipulation of Settlement and Judgment is not intended
7 to, nor shall it be construed to, operate in any way to resolve any civil claims other than those
8 expressly alleged in the Complaint or any criminal liability of the Defendant.

9 I. Nothing in this Stipulation of Settlement and Judgment shall be construed to
10 release the Defendant or its agents, successors, or assigns from their respective obligations to
11 comply with any applicable Federal, State, or local law, regulation, or permit. Nothing contained
12 herein shall be construed to prevent or limit the United States' rights to obtain penalties or
13 injunctive relief under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or any other law for other
14 alleged violations.

15 J. Civil penalties and any stipulated penalties paid pursuant to this Stipulation of
16 Settlement and Judgment are not deductible by the Defendant or any other person for federal,
17 state, or local tax purposes.

18 K. This Stipulation of Settlement and Judgment shall be filed with the Court
19 concurrently with the United States' Complaint. The Defendant consents to the entry of this
20 Stipulation of Settlement and Judgment without further notice and agrees not to withdraw from
21 or oppose its entry by the Court or to challenge any provision herein, unless the United States has
22 notified the Defendant in writing that it no longer supports entry of this Stipulation of Settlement
23 and Judgment.

1 L. The Court shall retain jurisdiction for the purposes of interpreting and enforcing
2 this Stipulation of Settlement and Judgment through the date that payment is made in accordance
3 with the provisions herein.

4 M. This Stipulation of Settlement and Judgment shall be considered an enforceable
5 judgment solely for purposes of post-judgment collection of any unpaid civil and/or stipulated
6 penalties and interest referred to in Paragraphs E and F above, in accordance with Rule 69 of the
7 Federal Rules of Civil Procedure; the Federal Debt Collection Procedures Act, 28 U.S.C. §§
8 3001-3008; and any other applicable statutory authority without further order of this Court. In
9 the event all or any portion of the civil penalty amount referred to in Paragraph E above is not
10 paid in accordance with the provisions of this Stipulation of Settlement and Judgment, the
11 Defendant shall be liable for attorneys' fees and costs incurred by the United States in collecting
12 any amounts due thereunder.

13 N. Nothing in this Stipulation of Settlement and Judgment creates, nor shall it be
14 construed as creating, any rights or claims in favor of any person not a Party to this Stipulation of
15 Settlement and Judgment.

16 O. Except as to those civil claims expressly alleged in the Complaint and resolved in
17 this Stipulation of Settlement and Judgment, in any subsequent administrative or judicial
18 proceeding initiated by the United States for injunctive relief, civil penalties or other appropriate
19 relief relating to this Lafarge facility, the Defendant shall not assert, and may not maintain, any
20 defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue
21 preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by
22 the United States in the subsequent proceeding were or should have been brought in the instant
23 case.

1 P. The undersigned representatives of the Defendant, the Chief or Deputy Chief of
2 the Environmental Enforcement Section, and the Regional Counsel of EPA certify that each is
3 fully authorized to enter into the terms and conditions of this Stipulation of Settlement and
4 Judgment and to bind legally the party he or she represents to this document.

5 Q. The Defendant hereby agrees to accept service of the complaint in this matter
6 from the United States by first class mail directed to William G. Miller, Vice President and
7 Associate General Counsel, Lafarge North America Inc., 13450 Sunrise Valley Drive, Suite 220,
8 Herndon, Virginia 20171 (or by hand delivery of the Complaint to his/her office) and to waive
9 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and
10 any applicable local rules of this Court, including, but not limited to, service of a summons with
11 the Complaint.

12 R. The Defendant consents to the entry of this Stipulation of Settlement and
13 Judgment without further notice.

14 S. Except as set forth in Paragraph M of this Stipulation of Settlement and Judgment,
15 each party shall bear its own costs and attorneys' fees in this action.

16 T. There are no separate agreements or understandings with respect to this matter
17 that have not been set forth in this Stipulation of Settlement and Judgment.

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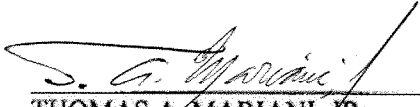
1 U. This Stipulation of Settlement and Judgment may be executed by the Parties in
2 separate counterparts, each of which when so executed and delivered shall be an original, but all
3 such counterparts shall together constitute but one and the same instrument.

4 AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED
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6 AND ADJUGED THIS ____ DAY OF _____, 2014.
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United States District Judge

FOR THE UNITED STATES:

DATED: 09-22-2014


THOMAS A. MARIANI, JR.
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Washington, D.C. 20044-7611

DATED: 9/22/14



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FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

DATED: Aug. 26, 2014


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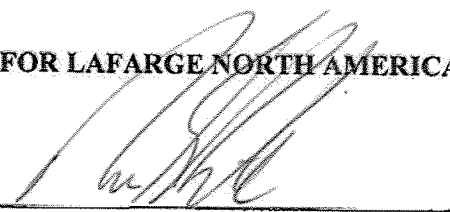
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FOR LAFARGE NORTH AMERICA INC.

DATED: August 6, 2014



William G. Miller
Vice President and Associate General Counsel

United States v. Lafarge North America Inc.
Stipulation of Settlement and Judgment

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